

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1813**

---

**Introduced by Assembly Member Buchanan**

February 21, 2012

---

An act to amend Section 85086 of the Water Code, relating to the Sacramento-San Joaquin Delta.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1813, as amended, Buchanan. Sacramento-San Joaquin Delta Reform Act of 2009.

~~Existing law, the~~

~~The Sacramento-San Joaquin Delta Reform Act of 2009, establishes the Delta Stewardship Council as an independent agency of the state. Existing law The act requires the State Water Resources Control Board to establish an effective system of Delta watershed diversion data and public reporting by December 31, 2010. Existing law The act requires the board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The act requires the board to develop new flow criteria for the Delta ecosystem, as specified. Existing law requires the board to submit those determinations to the council. The act subjects the flow criteria to modification over time based on a science-based adaptive management program that meets specified criteria.~~

~~This bill would make a technical, nonsubstantive change to those provisions require the system, for certain diversions, in lieu of requiring reporting, to use data from the consumptive use index modeling used by the Department of Water Resources to determine the Net Delta Outflow Index. The bill would authorize the system to enhance or replace~~

*the consumptive use index modeling with satellite imagery. The bill would require that the system, to the maximum extent practicable, use consumptive use data from consumptive use modeling or satellite imagery in lieu of public reporting.*

*The bill would require the new flow criteria to ensure that there is no degradation in water quality in Delta channels and to include flows into, within, and out of the Delta to replicate conditions when local and anadromous fish populations were at healthy and self-sustaining levels. The bill would require the flow criteria to include specified flows for anadromous fish, as defined.*

*The bill would subject flow criteria to modification over time based on measured fish populations in a management program that meets specified criteria. The bill would restrict to prescribed circumstances the use of measures other than flow as a substitute for flow.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 85086 of the Water Code is amended to
- 2 read:
- 3 85086. (a) The board shall establish an effective system of
- 4 Delta watershed diversion data collection and public reporting by
- 5 December 31, 2010. *The system, for diversions to the Delta*
- 6 *lowlands as shown on page 4 of the department's Sacramento-San*
- 7 *Joaquin Delta Atlas, dated 1993, and for other diversions to Delta*
- 8 *lands of less than 50 cubic feet per second, in lieu of requiring*
- 9 *reporting by those diverters, shall use data from the consumptive*
- 10 *use index modeling currently used by the department to determine*
- 11 *the Net Delta Outflow Index. The system may enhance or replace*
- 12 *consumptive use index modeling with satellite imagery. The system,*
- 13 *to the maximum extent practicable, shall use consumptive use data*
- 14 *from consumptive use modeling or satellite imagery in lieu of*
- 15 *public reporting of diversions.*
- 16 (b) It is the intent of the Legislature to establish an accelerated
- 17 process to determine instream flow needs of the Delta for the
- 18 purposes of facilitating the planning decisions that are required to
- 19 achieve the objectives of the Delta Plan.
- 20 (c) (1) For the purpose of informing planning decisions for the
- 21 Delta Plan and the Bay Delta Conservation Plan, the board ~~shall~~,

1 pursuant to ~~the board's~~ *its* public trust obligations, *shall* develop  
2 new flow criteria for the Delta ecosystem necessary to protect  
3 public trust resources. In carrying out this section, the board shall  
4 review existing water quality objectives and use the best available  
5 scientific information. The flow criteria for the Delta ecosystem  
6 shall include the volume, quality, and timing of water necessary  
7 for the Delta ecosystem under different conditions. *That flow*  
8 *criteria shall ensure that there is no degradation in water quality*  
9 *in Delta channels and shall include flows into, within, and out of*  
10 *the Delta to replicate conditions when local and anadromous fish*  
11 *populations were at healthy and self-sustaining levels. For*  
12 *anadromous fish, the flow criteria shall include, at a minimum,*  
13 *those flows necessary to sustain the natural production of*  
14 *anadromous fish on a long-term basis at levels not less than twice*  
15 *the average levels attained during 1967 to 1991, inclusive. As used*  
16 *in this subdivision, "anadromous fish" include salmon, steelhead,*  
17 *striped bass, sturgeon, and American shad that ascend the*  
18 *Sacramento and San Joaquin rivers and the tributaries of those*  
19 *rivers and the Delta to reproduce after maturing in the San*  
20 *Francisco Bay or the Pacific Ocean. The flow criteria shall be*  
21 developed in a public process by the board within nine months of  
22 the enactment of this division. The public process shall be in the  
23 form of an informational proceeding conducted pursuant to Article  
24 3 (commencing with Section 649) of Chapter 1.5 of Division 3 of  
25 Title 23 of the California Code of Regulations, and shall provide  
26 an opportunity for all interested persons to participate. The flow  
27 criteria shall not be considered predecisional with regard to any  
28 subsequent board consideration of a permit, including any permit  
29 in connection with a final BDCP.

30 (2) Any order approving a change in the point of diversion of  
31 the State Water Project or the federal Central Valley Project from  
32 the southern Delta to a point on the Sacramento River shall include  
33 appropriate Delta flow criteria and shall be informed by the analysis  
34 conducted pursuant to this section. The flow criteria shall be subject  
35 to modification over time based on ~~a science-based adaptive~~  
36 *measured fish populations in a* management program that  
37 integrates scientific and monitoring results, including the  
38 contribution of habitat and other conservation measures, into  
39 ongoing Delta water management. *Measures other than flow shall*  
40 *not be substituted for flow unless science-based measurements of*

1 *fish populations conclusively show increases in those fish*  
2 *populations over the levels specified in paragraph (1) that result*  
3 *from those other measures, so that adjustment in those flows can*  
4 *be made while still sustaining the required fish population levels.*  
5 *Any adaptive reduction in flow shall be temporary until*  
6 *measurement of fish populations conclusively shows the*  
7 *sustainability of the required fish populations. If sustainability is*  
8 *not demonstrated within two years from the date of the approval*  
9 *of the adaptive adjustment, the flows shall be returned to original*  
10 *levels.*

11 (3) Nothing in this section amends or otherwise affects the  
12 application of the board's authority under Part 2 (commencing  
13 with Section 1200) of Division 2 to include terms and conditions  
14 in permits that in its judgment will best develop, conserve, and  
15 utilize in the public interest the water sought to be appropriated.

16 (d) The board shall enter into an agreement with the State Water  
17 Project contractors and the federal Central Valley Project  
18 contractors, who rely on water exported from the Sacramento River  
19 watershed, or a joint powers authority comprised of those  
20 contractors, for reimbursement of the costs of the analysis  
21 conducted pursuant to this section.

22 (e) The board shall submit its flow criteria determinations  
23 pursuant to this section to the council for its information within  
24 30 days of completing the determinations.

25 (f) *The council shall not consider any Bay Delta Conservation*  
26 *Plan before it receives the flow determinations of the board*  
27 *pursuant to this section.*